
 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <h1 style="text-align: center;">DIRECTIVE</h1>	<p>TITLE</p> <p style="text-align: right;">No. 2770</p> <h2 style="text-align: center;">Vending Machine Contracts</h2>		
<p>SUPERSEDES</p> <p>Dir. #2770 dtd. 01/03/1996</p>	<p>DISTRIBUTION</p> <p style="text-align: center;">A</p>	<p>PAGE 1 OF 4 PAGES</p>	<p>DATE 21 2004</p>
<p>REFERENCES (includes but are not limited to):</p>	<p>APPROVING AUTHORITY</p> 		

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- I. **POLICY.** Installation of vending machines within facilities to provide visitors and employees access to consumable items such as beverages, candy, food, and tobacco products must be covered by formal contracts. Contracts for these services must be negotiated to provide facilities with the highest quality merchandise at the lowest possible sales price while generating a reasonable commission on sales and providing a reasonable space rental fee to ensure the repayment of services provided to vendors. Superintendents of Correctional Facilities and Camps are authorized to negotiate such contracts in accordance with Central Office guidelines, subject to review and approval by Central Office, the Attorney General, and the State Comptroller.
- II. **VENDING MACHINE UTILIZATION.** Vending machine contracts may be negotiated to service each of the below listed areas or clientele:
  - . Visitors, employees and inmates
  - . Employees only
  - . As part of an employee dining room program
  - A. Machines Accessible to Visitors, Employees, and Inmates  
 Such machines are normally located in visiting rooms and lobbies, and are utilized by visitors and employees.
    1. Contracts for this group of machines are to provide for a space rental fee for each machine based on rates established by Central Office guidelines. These rates represent reasonable reimbursement for the actual costs for electricity, water, or any other service required for the normal operation of the machine. Such space rental fees shall be collected and deposited into the General Fund on an AC 2405, Report of Monies Received with Tail.
    2. Contracts for this group of machines are to provide for a percentage commission to be paid by the 15th of each month to the Superintendent of the Correctional Facility or Camp.
      - a. Such commissions are to be deposited to the facility's "Inmate Occupational Therapy Account" and utilized in accordance with Section IV - Policy and Procedure Directive #4760 "Inmate Group Activities and Organizations".
      - b. Proceeds from these commissions are to be utilized for the benefit of the total inmate population and not for any single group of inmates or any purpose benefiting only a small segment of any facility's population.
      - c. Approval for the utilization of these funds must be consistent with the provisions of Directive #2771, "Inmate Occupational Therapy Fund." Facility requests must reflect the utilization of these funds for the benefit of the total inmate population and not an individual group or segment of the population.
  - B. Machines Accessible to Employees Only. Such machines are normally located in areas not utilized by visitors such as correction officer's rooms, locker rooms, and employee break rooms which are utilized by employees only.

1. Contracts for this group of machines are to provide for a space rental fee identical to that listed in Section II-A above. Collection and deposit into the general fund on an AC 2405, Report of Monies Received with Tail, is required.
2. Contracts for this group of machines are to provide for a percentage commission to be paid to the Superintendent of the Correctional Facility or Camp.
  - a. Such commissions are to be deposited into an "Employee Benefit Account" to be utilized for the benefit of all employees.
  - b. The utilization of these funds should be approved by a selected committee of employees representing each bargaining unit or group at the facility. Recommended use of these funds would be in areas such as retirement dinner costs, employee recreation areas, annual family picnics, etc.
  - c. Make up of Committee
    - (1) The committee shall be proportionate to the number of employees in each employee group.
    - (2) The committee shall determine the number of ad hoc members as needed per function.
    - (3) The committee shall have the authority to make recommendations only to the superintendent.
    - (4) the committee shall meet at least once a month.
    - (5) The committee shall elect a chairperson.
    - (6) Employee group representatives shall appoint their committee members from within their own employee organization.
    - (7) A financial report shall be provided on no less than a quarterly basis.
    - (8) Only those receipts pertaining to funds requested and obtained from the Employee Benefit Fund may be required by the committee.
    - (9) Minutes shall be taken at all Employee Benefit Fund meetings, with copies distributed to each member.
  - d. Care should be exercised to ensure that no single group of employees is the major beneficiary of these funds.
  - e. Overall responsibility for the proper use of these funds is placed with the Facility Superintendent.
- C. Machines Utilized as an Integral Part of an Employee Dining Room Program. Such machines are normally located in an area utilized by any person having access to them and are considered to be a part of the facility's employee dining room.
  1. Contracts for this group of machines are to provide for a space rental fee identical to that listed in Section II-A above. Collection and deposit into the general fund on an AC 2405, Report of Monies Received with Tail, is required.
  2. Contracts for this group of machines are to provide for a percentage commission to be paid to the Superintendent of the Correctional Facility or Camp.
    - a. Such commissions are to be deposited in the "Employee Dining Room Account" and processed as a portion of the sales for this unit.
    - b. Incorporation of these funds in the monthly profit and loss statements will permit their utilization as regular income from the day to day operations of the unit.

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### III. VENDOR REPORTS

- A. Monthly reports are required from the vendor reflecting a detailed explanation of sales by machine number and location. The Institution Steward should develop an auditing procedure that can be used periodically to verify that the reported sales are generally accurate.
- B. On occasion, facilities may negotiate a single contract that will cover the vending machines utilized in all three areas outlined above. In view of the reporting requirements, it is necessary that the contract specify that each machine be specifically identified by a visible number to allow for the accurate collection and distribution of the commissions paid.
- C. Whenever vending machines are installed or replaced, or at a minimum of once annually, the facility shall require the contract vendor to furnish the facility with an inventory of all vending machines operating on facility property. This inventory shall include the following information:

Type of machine

Exact location

Manufacturer's Make/Model

Serial Number

Year machine manufactured

- IV. **REBIDDING/RENEWING CONTRACTS.** Contracts for vending machine services should be written for a three-year period with a renewal clause that provides the option to extend the contract for two additional one year periods upon the written agreement of each party. Facilities must ensure that formal rebidding for vending machine services is conducted at least once every five years so that all prospective vendors are given equal opportunity to compete for the contract award. Please refer to Attachment "A", Guidelines For Vending Machine Contracts, and the sample RFP/Contract issued by the Division of Support Operations.
- V. **UNUSUAL CIRCUMSTANCES.** In some facilities, such as camps, circumstances may necessitate the waiving of this procedure. Requests for such a waiver should be submitted in writing to the Deputy Commissioner for Administrative Services fully explaining the unusual circumstances and why the policy in this Directive may adversely impact on the facility's ability to provide vending services. Upon review of the circumstances by appropriate Central Office staff, a waiver may be issued. Only those facilities receiving such a waiver will be exempt from any portion of this Directive.

ATTACHMENT "A"Guidelines For Vending Machine Contracts

The Division of Support Operations, with the concurrence of the Counsel's Office, is recommending the following changes be incorporated in any future Requests for Proposal (RFP) or contracts for vending machine services:

- A. The Department no longer requires that a RFP or contract specify a maximum age for vending machines in use. However, you should incorporate some language in the RFP/contract that states the vending machine equipment must be in good operating condition, and of modern design and technology. You may also want to stipulate that a machine must be replaced if it malfunctions (x) number of times in (y) months. (Example: 3 times in 2 months.)
- B. Some bid proposals require that the contractor furnish a surety bond equal to a certain percentage (usually 50% of the total proposal-aggregate total of the price x projected annual sales of each item). Since the facility is entitled only to a percentage commission based on machine registers, (not actual counted cash) a surety bond is not necessary and may prohibit a small business vendor from submitting a proposal.
- C. The monthly space rental fee should not be a bid item, but rather established in the proposal. To standardize the amounts charged by facilities, the Department has established the monthly rates as follows:
  - Free standing machine                      \$5.00 per month
  - Machine requiring any utilities      \$8.00 per monthMicrowave ovens and bill changing machines are exempt from the monthly space rental fee.
- D. Commissions should also not be a bid item. Commissions should be established in the bid proposal based on past experience. While we realize that the rate of commission varies from vendor to vendor and machine to machine, it is in the Department's best interest to establish the commission rates and base the contract award solely on the proposed selling prices.
- E. The contract award should be based on an aggregate weighted dollar value, by multiplying the selling price times (x) the estimated volume of sales of each item (or group of items if the selling prices are the same), and adding the resultant totals. This will provide for a single figure comparison to determine the low bid.

Each facility is required to establish its own commission rates, but the rate for any machine cannot exceed 30% of sales without written authorization from the Division of Support Operations. It is recognized that commissions are important to both the inmate and employee organizations, but the purpose of the vending machines is to provide a service to employees and inmate visitors. Therefore, primary consideration must be given to the selling prices since this benefits the users of the machines.